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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,436	10/06/2004	Andrew Silver	139355WOUS	1528

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EXAMINER	
CLARK, MAXWELL A	
ART UNIT	PAPER NUMBER
4183	
MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/510,436	SILVER ET AL.	
	Examiner	Art Unit	
	MAXWELL A. CLARK	4183	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 October 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☒ Claim(s) *1,5,9,12,13,15,16 and 20* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10/06/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Specification Objections

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

2. The disclosure is objected to because of the following informalities:

a. Page 1, lines 26-28, the abstract is recited in the summary of the invention.

b. Acronyms used throughout the disclosure should be explicitly defined to avoid ambiguity as some of the acronyms used may have more than one meaning.

c. Page 2, line 18 “he” should be changed to “the.”

Appropriate correction is required.

Claim Objections

3. Claims 1, 9, 12 and 13 are objected to because of the following informalities: Redundant claim language, "establishing a Wireless Access Protocol (WAP) Browser session between the MS and a WAP gateway; establishing a WAP session between the MS and WAP gateway." Appropriate correction is required.

4. Claims 5, 12, 15 and 20 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

5. Regarding claim 5, 12 and 20, claims 1, 9 and 16 on which they depend respectively already claims selection of the plurality of internet audio contents.

6. Regarding claim 15, claim 9 on which it depends already claims audio content streamed from the internet audio to the MS. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1, 9 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In the art WAP has different meanings for example, Wireless Application Protocol, which defines a

network architecture for content delivery over wireless networks while implementing networking protocols such as http, tcp, ssl, etc., or Wireless Access Point which are specially configured nodes on wireless area networks and act as central transmitters and receivers of wireless radio signals. The specification should clearly define a Wireless Access Protocol as used in the claims.

9. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The terms "PDSN and WAP" in claims 1, 9 and 16 are used by the claims to mean "Private Data Service Node and Wireless Access Protocol", while the accepted meaning is "Packet Data Serving Node and Wireless Access Point or Wireless Application Protocol." The terms are indefinite because the specification does not clearly redefine the terms.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

11. Claims 1-5, 8-12 and 15-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Feakes (GB 2360169 A).

12. Regarding claim 1, Feakes discloses a method for providing Internet based audio to a user in a wireless network, initiating a request to establish a Point to Point (PPP) session from a mobile station (MS) [connection between the MS (figure 1- 10) and Base Station (figure 1-11)] to a Private Data Service Node (PDSN) [PSTN/ISDN (figure 1-12)], establishing a connection from the PDSN to a Internet Audio Gateway [Audio Gateway (figure 1-26)] (Abstract; page 2, lines 30-35; page 3, lines 2-91), establishing a Wireless Access Protocol (WAP) Browser session between the MS and a WAP gateway [WAP gateway / proxy (figure 1-14)], selecting from a plurality of Internet Audio contents to play on the MS (see figure 4), sending a selection of the plurality of Internet Audio contents to the MS (page 7, lines 13-20; also see figure 8, also see claim 1 and pages 7-10).

13. Regarding claims 2, 3, 10, 11, 17 and 18, Feakes discloses selecting from a set of audio contents that are within a geographic region (page 11, lines 17-20; figure 6), as disclosed, the user selects from a list of countries, it is inherent by selecting a different country the user is effectively selecting a different city.

14. Regarding claims 4, 5, 12, 19 and 20, Feakes discloses changing the selection of the plurality of Internet Audio contents and selection from a plurality of radio stations via selecting links corresponding to a particular real-time audio (page 10 lines 18-33; page 15, lines 30-32; figures 3, 4 and 5).

15. Regarding claims 8 and 15, Feakes discloses audio content that is streamed to the Internet Audio gateway, buffered, and then sent to the MS (page 4, lines 7-23; page 16, lines 1-20).

16. Regarding claim 9, Feakes discloses a wireless communications network for providing Internet based audio to a user in the wireless communications network, a Private Data Service Node (PDSN), a mobile station (MS) initiating a request to establish a Point to Point (PPP) session from the MS [connection between the MS (figure 1- 10) and Base Station (figure 1-11)] to the PDSN [PSTN/ISDN (figure 1-12)], an Internet Audio Gateway, wherein the PDSN establishes a connection to a Internet Audio Gateway [Audio Gateway (figure 1-26)] (Abstract; page 2, lines 30-35; page 3, lines 2-91), a Wireless Access Protocol (WAP) Gateway [WAP gateway / proxy (figure 1-14)], wherein a Wireless Access Protocol (WAP) Browser session is established between the MS and the WAP gateway and a WAP session is established between the MS and the WAP gateway, and a plurality of Internet Audio contents to play on the MS (see figure 4), wherein the user selects from the plurality of Internet Audio contents and the selection is streamed to the Internet Audio Gateway, wherein the Internet Audio Gateway buffers the stream of audio content (page 4, lines 7-23) and a portion of the audio content is sent from the Internet Audio Gateway to the MS (page 7, lines 13-20; figures 1-8; claim 1 and 10).

17. Regarding claim 16, Feakes discloses a method for providing Internet based audio to a user in a wireless network, initiating a request to establish a Point to Point (PPP) session from a mobile station (MS) [connection between the

MS (figure 1- 10) and Base Station (figure 1-11)] to a Private Data Service Node (PDSN) [PSTN/ISDN (figure 1-12)], establishing a connection from the PDSN to a Internet Audio Gateway, establishing a Wireless Access Protocol (WAP) Browser session between the MS and a WAP gateway, establishing a WAP session between the MS and WAP gateway [WAP gateway / proxy (figure 1-14)], selecting from a plurality of Internet Audio contents to play on the MS, streaming a selection of the plurality of Internet Audio contents to the Internet Audio Gateway, buffering a stream of audio content at the Internet Audio Gateway (page 4, lines 7-23), and sending a portion of the audio content from the Internet Audio Gateway to the MS (see figures 1 and 8, also see claim 1 and pages 7-10).

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

19. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

20. Claims 6, 7, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Preston et al. (US 2001/0015965 A1).

Feakes discloses the elements of the claims above but does not specifically disclose the use of GSM or CDMA in the mobile environment.

However, Preston discloses the use of GSM and CDMA for the purpose of a voice over data concept (Paragraph [0031]).

It would have been obvious to one of ordinary skill in the art at the time the application was filed to modify the invention disclosed by Feakes to include the use of GSM and CDMA, as taught by Preston, in order to achieve multiple users within a limited spectrum. Multiple users is a requirement in the invention disclosed by Feakes as shown in the disclosure section describing multicasting to multiple mobile users within the same geographic region (page 22, lines 14-17). Also it is well known in the art at the time of the invention that the most widely used standard for mobile users in the UK is GSM.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Halliday, Kim, Bloebaum, Andrew et al., Yang, Suzuki, Frantz, Chang, Naudus, Elliott and Jimenez.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MAXWELL A. CLARK whose telephone number is (571)270-1956. The examiner can normally be reached on Monday to Thursday 7:30A.M. to 5P.M. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571) 272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Maxwell A. Clark/
Examiner, Art Unit 4183

December 31, 2007

/Len Tran/
Supervisory Patent Examiner, Art Unit 4183